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COMMITTEE ON ECONOMIC, SOCIAL AND CULTURAL RIGHTS

Eighth session

SUMMARY RECORD OF THE 3rd MEETING

Held at the Palais des Nations, Geneva,
on Tuesday, 11 May 1993, at 3 p.m.

Chairperson: Mr. ALSTON

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GE.93-16419 (E)

The meeting was called to order at 3.15 p.m.

ORGANIZATION OF WORK (agenda item 2) (continued)

1. The CHAIRPERSON invited the Committee to consider a letter dated 16 December 1992 from the Permanent Representative of Panama in Geneva, which had been circulated to members, and a letter from the Minister for Foreign Affairs of Panama to the Assistant-Secretary-General for Human Rights and Director of the United Nations Centre for Human Rights, which had not been circulated to members.

2. Mr. SIMMA said that the two letters had been received in connection with the reports of Panama considered by the Committee at its sixth session in November 1991.

3. Paragraph 117 of the Committee's report on that session (document E/1992/23-E/C.12/1991/4) stated in connection with article 11 of the Covenant that members of the Committee had expressed concern for the thousands of inhabitants of El Chorillo, whose homes had been destroyed by Panamanian and American forces in early 1990, and had requested further information concerning the forced evictions of families in Tocumen, San Miguelito and Panama Viejo.

4. In reply, the representative of the State party had said that persons whose lodging had been in areas destroyed by Panamanian and American forces were free to return to their former neighbourhoods. Three apartment buildings had already been constructed for that purpose and three others were nearing completion. Additional accommodations had been built in other locations for those who had wished to move. The United States had provided financial aid for the families affected (para. 122).

5. In its concluding observations (paras. 133 to 139 of the report), the Committee stated that several detailed questions had been asked concerning both housing rights and evictions to which the responses provided by the delegation of Panama were viewed by the Committee as unsatisfactory. The Committee had given detailed reasons for its view. First, there was a disparity between the Government's claim that 3,000 persons had been affected by the bombing in El Chorillo and all other sources available which placed the figure between 12,500 and 20,000. Secondly, the responses given by the State party as to the living conditions of residents of El Chorillo conflicted with the information received by the Committee pointing to complaints concerning the long distance that now had to be travelled on relatively expensive public transportation, the overall poor quality of the new housing provided and the fact that many persons had yet to be rehoused. Thirdly, the justification for the actions carried out by the Panamanian and United States forces in Tocumen, San Miguelito and Panama Viejo in early 1990, which had affected over 5,000 persons, was unacceptable under the terms of the Covenant as a ground for forcibly removing people from their homes. Many houses had been demolished, and evictions had not been accompanied by legal eviction orders. In the Committee's view, evictions carried out in that way not only infringed upon the right to adequate housing but also on the inhabitants' right to privacy and security of the home.

6. In April 1992 the Government of Panama had submitted additional information on the issues discussed in the Committee's report (E/1989/5/Add.8). There was only one short paragraph on housing, which did not deal with the eviction issue or the El Chorillo bombing issue. On the specific questions put by the members of the Committee, it was stated in paragraphs 26 and 27 that the Ambassador of Panama in Geneva would reply to the questions of Mr. Simma and Mr. Wimer Zambrano. The other questions raised were answered in one way or another.

7. In paragraphs 64-87 of that document, the Government of Panama had drawn attention to errors, misrepresentations and omissions in the Committee's report.

8. At its seventh session, the Committee had again discussed the matter (E/C.12/1992/SR.16 and 23). At the 16th meeting he had proposed that the Committee should invite Panama to agree to a mission from the Committee visiting the country to study the question, as had already been done in the case of the Dominican Republic. The proposal had been supported by other members, especially in view of further information and photographs received from Habitat International Coalition. He had also argued that it was unacceptable for a Government to ask for corrections to be made to the Committee's draft report.

9. The report on the seventh session of the Committee, as yet unpublished, stated that the Committee took note of the fact that the delegation of Panama was not in a position to answer the questions which the additional report of Panama had indicated would be provided to the Committee at its seventh session. The Committee subsequently decided, in accordance with the procedure for follow-up action adopted at its seventh session, to offer to send to Panama one or more members of the Committee for the purpose of pursuing its dialogue with the Government in relation to specific matters identified by the Committee in paragraph 135 of its report on its sixth session. The Committee noted that the supplementary information provided by the State party in document E/1989/5/Add.8 had failed to clarify the issues. The Committee requested the Secretary-General to inform the Government of Panama of its decision as soon as possible.

10. The report on the seventh session of the Committee contained the text of a recommendation to the Economic and Social Council for adoption at its session in July 1993, subject to the agreement of the States parties concerned.

11. The letter to the Chairperson from the Permanent Representative of Panama, dated 16 December 1990, indicated Panama's dissatisfaction at the procedures used by the Committee, in taking decisions on the basis of the reports that Governments had not had an opportunity to examine, and failing to invite delegations to attend when final decisions were to be taken. It stated that the report and the draft decision to be sent to the Economic and Social Council ignored the Panamanian delegation's request that the Committee should defer a decision until its next session, when the Government would have been able to provide in writing more detailed responses to the questions of concern to the Committee and had studied the report of Habitat International Coalition. The letter from the Permanent Representative stated that, in

Panama problems rising in the application of the Covenant where housing was concerned, were much too small, compared with those arising in other parts of the world, to justify a decision by the Committee to single out his country for the dispatch of a fact-finding mission.

12. The letter from the Minister for Foreign Affairs to the Assistant-Secretary-General for Human Rights expressed deep concern at the Committee's procedure in considering the additional information of Panama, on the basis of a document submitted by Habitat International Coalition which had not been made available to the Panamanian delegation until 12 days after the Committee's meeting. The letter stated that it was unacceptable for the Committee to have used the Habitat International Coalition report to recommend a mission of inquiry to verify conflicting information on violations of the right to housing. The letter also stated that the Government was greatly perplexed by an item in the newspaper El Siglo of 11 December 1992 stating that the Committee would condemn Panama for violations of the right to housing provided for in the Covenant and that the Committee's decision had been influenced by a report issued by the Panamanian National Commission on Human Rights. The proceedings of the Committee's meeting should have been kept confidential. Finally, the letter alleged a clear lack of impartiality on the part of the Committee in connection with its consideration of the complaints on housing made against the Government of Panama, which accordingly requested a review of the report resulting from that study and of any action taken subsequently.

13. The Committee therefore had to discuss the issue of taking decisions on the basis of reports that Governments had not had an opportunity to examine. However, only the Government of Panama had ever complained about such decisions. The Committee also had to decide whether it had failed to invite delegations expressly to attend meetings at which final decisions were taken. In addition, it had to decide whether Panama had been singled out for the dispatch of a fact-finding mission, in connection with which he recalled that in December 1992 the Committee had decided that such an approach would be adopted in future without discrimination.

14. As to the point made in the letter from the Minister for Foreign Affairs, namely, that the Committee had considered the information on the basis of a document submitted by Habitat International Coalition which was not available to the Panamanian authorities, he observed that, despite the importance of that information, the Committee would have been only too happy to base its decision on the information provided by Panama itself had it been available and satisfactory. Its decision to recommend the dispatch of a mission of inquiry was based not solely on information from Habitat Coalition Information but on all the information available.

15. With regard to the newspaper report, that was not a matter for the Committee to discuss, but clearly the substance of the Committee's debate, held in public, would have given rise to speculation that Panama would be censured.

16. He suggested that a letter to the Foreign Minister of Panama should be drafted setting out the Committee's views on the matter.

17. The CHAIRPERSON pointed out that it would be appropriate for the Committee to write to the Permanent Representative of Panama and for the Assistant-Secretary-General for Human Rights to refer to that letter in his own reply to the Minister for Foreign Affairs.

18. Mr. WIMER ZAMBRANO said that the Government of Panama had shifted its ground and was misrepresenting the facts. It was claiming that the Committee had based its argument on a report by Habitat International Coalition which the Government had not seen, whereas originally it had accused the Committee of acting in bad faith. The Panamanian delegation had appeared before the Committee in December 1992 in order to reply to oral and written questions, but the replies had not corresponded to the questions asked. Yet, it seemed unlikely that facts available to non-governmental organizations and the press were unknown to the Government. The point of the proposed mission was therefore to verify the facts themselves, not to put any particular interpretation on them.

19. Mr. GRISSA took exception to the sentence in the Permanent Representative's letter suggesting that the Committee should have deferred a decision until its next session. Any pressure to consult Governments would result in a loss of independence for the Committee. He added that the difficulties that had arisen with regard to Panama should alert the Committee to the need to consider all the ramifications of involvement with non-governmental organizations. Habitat International Coalition, for example, was evidently hostile to the Government of Panama. He was not opposed to taking evidence from non-governmental organizations, but felt that the consequences of doing so must be borne in mind.

20. Mrs. BONOAN-DANDAN pointed out several erroneous implications in the Permanent Representative's letter. He had been wrong to state that the Committee failed to invite delegations to attend when final decisions were to be taken, implying that they were barred from attending. In fact delegations were free to attend whenever they wanted. Referring to the phrase regarding the Committee's decision "to single out" his country for the dispatch of a fact-finding mission, she said that it distorted the Committee's intentions. As had already been explained to the Permanent Representative, the fact-finding mission could be of positive assistance to the Government of Panama.

21. The CHAIRPERSON suggested that Mr. Simma should be asked to draft a letter on the Committee's behalf.

22. Mr. WIMER ZAMBRANO said that rather than sending letters back and forth, the Committee should decide the contents of any such letter and should clarify its position with regard to the fact-finding mission.

23. The CHAIRPERSON said that since the Committee's decision would have to be ratified by the Economic and Social Council, it was preferable to send the Government of Panama a firm and clear answer immediately and to postpone a final decision.

24. Mr. WIMER ZAMBRANO assented, on the understanding that the Committee's confidence in the correctness of its decision was emphasized.

25. The CHAIRPERSON said that if there was no objection, he would take it that the Committee wished to draft a letter to the Permanent Representative of Panama.

26. It was so decided.

Participation by non-governmental organizations in activities of the Committee

27. The CHAIRPERSON, pointing out that the difficult situation with regard to Panama had arisen because documents from non-governmental organizations had been circulated on an informal basis, submitted, with a view to achieving greater transparency, the following draft for the consideration of the Committee:

"NGO PARTICIPATION IN ACTIVITIES OF THE COMMITTEE

1. The Committee reiterates its longstanding invitation to NGOs to submit to it any relevant information relating to all aspects of its work.

2. A short period of time will be made available at the beginning of each session of the pre-sessional working group to provide NGOs with an opportunity to submit relevant oral information to the members of the group.

3. The Committee will set aside part of the first afternoon at each of its session to enable it to receive oral information provided by NGOs which is of direct relevance to its consideration of reports during that session. Such information should be reliable and should not be abusive and should focus specifically on the provisions of the Covenant on Economic, Social and Cultural Rights. The relevant meeting will be open and will be provided with interpretation services, but will not be covered by summary records. The purposes are: to enable the Committee to inform itself as fully as possible, to probe the accuracy and pertinence of information which would most probably be available to it anyway, and to put the process of receiving NGO information on a more transparent and open basis than is permitted by the current approach.

4. NGOs wishing to present oral information should inform the Committee in advance. In cases in which the Committee receives more expressions of interest than can be dealt with in the limited time available, the Chairperson of the Committee, in consultation with the Bureau, shall determine on an objective basis which NGOs will be invited to make an oral presentation."

28. He hoped that such a procedure would enable the Committee to inform itself more fully, to probe the accuracy of information received and to make the process of receiving NGO information more open than it currently was.

29. Mrs. BONOAN-DANDAN welcomed the draft proposal, since it would give the pre-sessional working group time to incorporate information from non-governmental organizations into the communications sent to member States. She suggested, however, giving more prominence to the sentence referring to the provisions of the Covenant on Economic, Social and Cultural Rights.

30. Mr. ALVAREZ VITA queried the emphasis on oral communications, which would rule out such information as statistics, tables or press-cuttings.

31. Mr. WIMER ZAMBRANO agreed with the previous speaker and suggested deleting the word "oral" wherever it appeared. He also suggested a fifth paragraph which would state that the information given could be communicated to the governments concerned, to keep them abreast of what was happening.

32. Mr. MUTERAHEJURU pointed out that unless finance were provided some non-governmental organizations would be unable to attend to give oral information owing to lack of resources.

33. Mr. TEXIER argued for the retention of the word "oral". National non-governmental organizations could, as often happened elsewhere, send information through international ones.

34. The CHAIRPERSON suggested adding the words "and/or written", where the word "oral" appeared.

35. Mr. SIMMA drew attention to the concern of some members that accepting oral evidence would mean reducing written evidence and suggested retaining the word "oral", but at the same time adding clarification in the first, second and third paragraphs of the draft.

36. Mr. GRISSA supported the idea of admitting oral information, but questioned the need to reserve a whole afternoon session for that purpose. He stressed that any information should relate to agenda items or reports. Irrelevant information would be unwelcome.

37. Mrs. JIMENEZ BUTRAGUEÑO pointed out that the Committee's deliberations were not restricted to reports, so that a seemingly irrelevant piece of information might turn out not to be so.

38. Mr. GRISSA reminded the Committee of Mr. Wimer Zambrano's suggestion of a fifth paragraph which would state that information would be communicated to Governments to enable them to respond in a manner that was not confrontational.

39. Mrs. BONOAN-DANDAN asked whether the new paragraph would indicate that Governments should also receive copies of presentations by non-governmental organizations to the pre-sessional working group.

40. Mr. SIMMA pointed out that the presentations to the pre-sessional working group would be incorporated in the information submitted to the Committee, so a fifth paragraph was unnecessary. Moreover, since meetings would be open, delegations would have the opportunity to be present.

41. Mr. GRISSA raised the question of the confidentiality of information, pointing out that some local non-governmental organizations could suffer for their participation. He therefore considered that Governments should be informed of relevant information and of accusations against them, but not the precise source of such information or accusations.

42. The CHAIRPERSON said that confidentiality was a matter for the non-governmental organization concerned. If it preferred to do so, it could submit information through a neutral party. With regard to members' concern about difficulties of access, he suggested the following form of words: "To the extent that information provided to the Committee in writing in accordance with these procedures is referred to by the Committee in its questions, the relevant information should be available for consultation by the Government concerned and all other interested parties". Any information would be placed on the Committee's country file, unless it was abusive or inappropriate.

43. Mr. SIMMA asked how the Committee could reach interested non-governmental organizations to tell them that it was opening up its procedure. He suggested asking the secretariat for help.

44. The CHAIRPERSON concurred, suggesting the drafting of a sixth paragraph in which the secretariat would be asked to make the Committee's ideas more widely known. In response to a query from Mrs. Jimenez Butragueño regarding the use of the word "abusive", he said that it was a technical term used by lawyers to describe the abuse of a right and should be left as it stood. In the light of the Committee's comments an amended draft proposal would be circulated. He hoped that, without being a dramatic breakthrough, the final draft proposal would be seen as a significant achievement, making the Committee's work more efficient.

45. Turning from the general to the particular, he reminded members of the request by a group of Canadian non-governmental organizations to make a presentation to the Committee, a request to which the Canadian Government had raised no objection. He proposed that the Committee might, on an exceptional basis, invite representatives of those non-governmental organizations to address it during the first 45 minutes of the meeting to be held at 10 a.m. on Monday, 17 May. Interpretation facilities would be provided, but the proceedings would not be covered in a summary record.

46. Mr. SIMMA asked for confirmation that the Canadian delegation would also be informed of the proceedings scheduled to take place on the morning of Monday, 17 May.

47. The CHAIRPERSON said that the Canadian delegation was not scheduled to appear until the afternoon of Monday, 17 May, but that it would be notified of the Committee's intention to hear the presentation by the group of Canadian non-governmental organizations at the morning meeting on the same day.

48. Mr. SIMMA felt that it would be appropriate for the Canadian delegation to participate in the morning's proceedings, so that it could provide an immediate response.

49. Mr. WIMER ZAMBRANO took issue with the proposal that there should be no coverage of such presentations in summary records. In the interests of fairness and as a matter of courtesy, any points of controversy that might arise should be reflected in the summary records.

50. The CHAIRPERSON said that the general procedure just adopted was designed to enable the Committee to decide which issues arising from a presentation by a non-governmental organization should be taken up. There would thus be no need for Governments to respond to each and every issue raised by a non-governmental organization; they would need to respond only when a member of the Committee subsequently expressed concern regarding one of those issues. If each and every allegation made was placed on record, Governments would then be compelled to respond to them, however preposterous or unfounded they might be.

51. Mr. WIMER ZAMBRANO stressed the need for the Committee to have access to some form of document to which it could refer if, at a later date, it returned to any issues raised by a non-governmental organization.

52. The CHAIRPERSON said that non-governmental organizations would doubtless provide written information as a basis for their oral presentation. That information would be placed on file, and some form of written record would thus be available for consultation, if any issues were subsequently taken up by members of the Committee.

53. Mr. SIMMA suggested that, without prejudice to the procedure it intended to adopt regarding future cases, the Committee should, purely as an experiment, invite the Canadian delegation to attend the presentation by the Canadian non-governmental organizations, thereby providing it with an opportunity to respond immediately to any allegations made. Otherwise, it might be a matter of years before the Committee was in a position to address those allegations.

54. The CHAIRPERSON said that it was very important to adhere consistently to a set of rules to be applied equally to all countries, and that it would be undesirable to allow an exception in the case of Canada. Furthermore, under the procedure adopted, the Canadian Government was in any case free to attend the morning's proceedings. Mr. Simma's concern would thus be addressed by notifying the Canadian delegation that the hearing would take place, enabling it to listen to the proceedings if it so wished.

55. Mr. GRISSA stressed the desirability of avoiding any confrontation between non-governmental organizations and Governments within the Committee. The role of non-governmental organizations should be to inform the Committee; thereafter, the Committee should itself put questions to Governments on the basis of that information.

56. The CHAIRPERSON concurred with Mr. Grissa's remarks; the procedure adopted was designed to secure precisely that objective. He proposed that the

Committee should apply the procedure in the manner already outlined, notifying the Canadian delegation that the presentation would take place, outside the context of consideration of the Canadian report.

57. It was so decided.

Report by the Chairperson on activities of relevance to the work of the Committee by other bodies

58. The CHAIRPERSON, referring to Commission on Human Rights resolution 1993/14, noted the positive nature of the section devoted to the work of the Committee, welcoming as it did the Committee's decision to take appropriate measures in relation to those States parties whose reports were long overdue. The Commission had also welcomed the continuing efforts made by the Committee to develop greater in-depth understanding of the relevant issues of the Covenant by holding a general discussion on one of its specific rights or articles and had taken note of the support expressed by the Committee for the drafting of an Optional Protocol to the Covenant. The resolution also called upon the international financial institutions to develop their human rights policies, which was one of the reasons why he had suggested that the matter might be a subject for general discussion within the Committee at a future date. It further referred to the question of advisory services, which would have to be addressed in some detail by the Committee in future.

59. Two rapporteurs had been appointed to conduct studies on extreme poverty and on the right to adequate housing respectively. Both topics were of direct relevance to the Committee. A 15-member Working Group on the Right to Development had also been set up, whose work the Committee would no doubt wish to follow closely.

60. With regard to Mrs. Bonoan-Dandan's contribution to the subject, he observed that that report of the Committee on the Rights of the Child simply contained concluding observations, and was therefore more concise than comparable reports by other bodies.

61. The Committee on the Elimination of Racial Discrimination, on which Mr. Simma would be reporting in greater detail, had adopted an important procedure for urgent action.

62. Concerning the World Conference on Human Rights, the Preparatory Committee for which had recently met for three weeks and whose report would be available shortly, the Committee might wish to consider the advisability of proposing a short drafting amendment to ensure that due reference to economic, social and cultural rights was included in the statement for the World Conference.

63. The meeting of persons chairing the human rights treaty bodies had taken place during the course of the Preparatory Committee session, and several proposals for inclusion in the draft statement had also been made on that occasion. Another meeting was envisaged during the World Conference, which

might well for the first time include chairpersons of European, African and Inter-American commissions and courts, as well as those of UNESCO and ILO bodies.

64. Mrs. BONOAN-DANDAN indicated that the Committee on the Rights of the Child had scheduled at its forthcoming session a general discussion on economic exploitation of the child, to which members of the Committee might wish to make some input.

Format for conclusions in relation to States parties which had not reported or appeared before the Committee

65. The CHAIRPERSON invited the Committee to discuss the approach to be taken to non-reporting States.

66. Mr. SIMMA, suggested that, when preparing material on non-reporting States parties, rapporteurs should follow the format used in the observations of the Human Rights Committee and the Committee on the Rights of the Child already distributed to members of the Committee and already adopted for the concluding observations on Belarus, and that the Committee's observations on the States parties concerned should also follow that format, namely, a brief introduction, positive aspects, factors and difficulties impeding the application of the Covenant, principal subjects of concern, and suggestions and recommendations. The relevant rapporteur for each country concerned might make an oral presentation and possibly prepare draft concluding observations at a later stage.

67. The CHAIRPERSON proposed that the Committee should proceed along the lines proposed by Mr. Simma.

68. It was so decided.

ELECTION OF OFFICERS

69. Mr. GRISSA, on behalf of the African group nominated Mr. Muterahejuru and Mr. KOUZNETSOV, on behalf of the East European group, nominated Mrs. Vysokajova for the offices of Vice-Chairman.

70. Mr. Muterahejuru and Mrs. Vysokajova were elected Vice-Chairmen by acclamation.

GENERAL DISCUSSION ON THE RIGHTS OF THE AGEING AND ELDERLY IN RELATION TO THE RIGHTS RECOGNIZED IN THE COVENANT (agenda item 6)

71. Mrs. JIMENEZ BUTRAGUEÑO said that the letters she had sent out in January 1993 inviting non-governmental organizations to participate in the general discussion had thus far yielded only four participants. Letters of acceptance had been received from Mrs. Hoskins, a representative of the International Federation on Ageing (IFA) and of the American Association of Retired Persons, who would speak on the participation of elderly people in society and would submit a video presentation; from Mr. Swepston of

the International Labour Organisation, who would submit a written contribution; from Ms. Pinet, of the World Health Organization; and from Mrs. Lambert-Lamond, representative of the Université du Troisième Age in Geneva, who would presumably be discussing educational and cultural aspects of the question. In view of the small number of participants, she herself would be willing to make an additional written contribution if members so desired.

72. The CHAIRPERSON said that if members knew of any other non-governmental organizations that might wish to participate, the Committee would be happy to include them in the discussion.

The meeting rose at 5.35 p.m.